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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
07/705,720	05/24/91	YOSHIOKA	S 35, C5745-CIP

ART UNIT	PAPER NUMBER
2604	11

E6M1
FITZPATRICK, CELLA, HARPER & SCINTO
277 PARK AVE.
NEW YORK, NY 10172

HORABIKER EXAMINER

DATE MAILED: 05/05/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 2/3/93 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire three month(s), — days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-155 are pending in the application.
Of the above, claims 133-154 are withdrawn from consideration.
2. ☒ Claims 1-66, 96 have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 67-95, 97-132, 155 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☒ The proposed drawing correction, filed on 2/3/93, has been ☒ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

1. The objections ^{to} of the abstract, Figures 39B and 39C, summary of the invention, and brief description of the drawings have been withdrawn in view of applicants amendment on February 3, 1993.

2. The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the phosphor within the face plate as claimed in claims 67 and 155 must be shown or the feature cancelled from the claim. No new matter should be entered.

3. Claims 67-155 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. In claims 67 and 155 the phrase "a faceplate, an electron emitting device,..." is unclear. It appears the phrase "a face plate" should be provided on a separate line in order to distinguish the face plate from the electron emitting device.

5. Claims 94, 95 and 97-132 are incomplete for failing to suggest essential elements and necessary structural cooperative relationship of these elements thus rendering the claims confusing and unclear and raises the question of operability. As claimed, there is no structural relationship between the phosphor and the electron emitting device (see MPEP 706.03(f)). Where, with respect to the display device, are these elements located? Also, without any structural relationship claimed between these

elements, it is not understood how the emitted electrons can stimulate the phosphors.

6. In claims 118, 119 and 124 the phrases "said semiconductor layer" and "the semiconductor layer" lack antecedent basis. Only a semiconductor has been established in claim 117.

7. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as the specification, as originally filed, does not provide support for the invention as is now claimed.

8. The specification indicates at the insertion on page 55 after line 4 (lines 14-19 of insertion) the fluorescent members (note: not phosphor as claimed) are at the inner side of the faceplate, not within the face plate as claimed in claims 67 and 155.

9. Claims 67-93 and 155 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

10. Claims 67-99, 101-107, and 109-116 are rejected under the judicially created doctrine of obviousness-type double patenting

as being unpatentable over claims 1-38 and 40-49 of U.S. Patent No. 5,066,883 in view of Klopfer et al.

11. Patent No. 5,066,883 claims the electron emitting device as claimed in the present application. The only difference is in regards to the electron emitting device being in a display device with a phosphor. However, it is well known in the display device art to use an electron emitting device in a display device with phosphor as evidenced by Klopfer et al. (see column 3, lines 42 - column 4, line 10).

12. It would have been obvious to one of ordinary skill in the art to provide the electron emitting device claimed in U.S. Patent 5,066,883 in a display device with phosphor as evidenced by Klopfer et al. because Klopfer et al. teaches the well known concept of providing electron emitting devices in a display device with phosphor.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

13. Claims 100, 108, 117-132 and 155 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

14. Applicant's arguments filed February 3, 1993 have been fully considered but they are not deemed to be persuasive.

15. In regards to applicants arguments on page 9 with respect to not showing the phosphor in the Figure 5 is not persuasive. The examiner is not objecting to the specification for failing to disclose a phosphor but rather objecting to the drawings for not showing the phosphor as claimed. Rule 37 CFR 1.83(a) states that "The drawings must show every feature of the invention specified in the claims".

16. The applicants arguments with respect to the obviousness-type double patenting rejection in the paragraph bridging pages 10 and 11 is also not persuasive. It appears applicants are arguing each patent separately and not for what the combined teachings would suggest. Applicants invention is based on the specifics of the electron emitting device (subcombination). The mere inclusion of a display device with a phosphor layer as a combination with the electron emitting device would not warrant extending patent protection of the electron emitting device since electron emitting devices are conventionally used in typical display devices with a phosphor therein as evidenced by Klopfer et al. It is also noted that applicants are not claiming a Fluorescent member as argued.

17. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL.** See M.P.E.P.

Serial No. 705,720

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Art Unit 2604

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

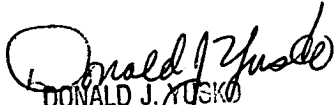
A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Horabik whose telephone number is (703) 305-4812.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4900.

M. Horabik:lsd
May 4, 1993

ms


DONALD J. YUSKO
SUPERVISORY PATENT EXAMINER
ART UNIT 264